IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6593 OF 2007

Ma Care..... .... Petitioner.
Versus
The Union of India & Ors.... ... Respondents.

Mr. A.M.Hidaytulla i/by M/s. India Law Alliance for the Petitioner.
Mr. A.J.Rana, Sr. Advopcate with Mr.Jethali and Ms.Rutuja Ambekar for Unon of India.

CORAM : SWATANTER KUMAR, C.J. & DR.D.Y.CHANDRACHUD, J.

DATED : 3RD OCTOBER, 2007.

P.C.:

We have heard the learned Counsel appearing for the parties.

2. In this petition the petitioner primarily prays for the direction to the respondents by way of restraint for continuing the proceeding in furtherance to the show cause notices dated 13th June, 2007 and during pendency of the writ petition not to take any action in furtherance thereto.

3. The show cause notice itself had indicated that the Assessee's claim for refund of amount of Rs.13,16,673/- was ordered by the Commissioner (Appeals), Central Excise, vide order dated 24th

February, 2006. That refund was actually made to the petitioner. However, before effecting the refund the department has also filed appeals against the order of the Commissioner and the said appeals are admittedly pending before the Tribunal as of today.

4. Prima facie, there appears to be some merits in the submission of the learned Counsel appearing for the petitioner that in the circumstances of the case it would be an exercise in futility if the action in furtherance to the show cause notices dated 13th June, 2007 is permitted to be taken and further more it would cause serious prejudice to the petitioner. Apparently, there is no doubt that the petitioner has an order in his favour for refund of the amount. Thus, in view of that order, the respondents would have no jurisdiction to call for the refund of the amount so paid to the petitioner. The department having already filed the appeals, the orders have still to attain finality between the parties as it is subjudice before the Tribunal. In these circumstances, we are of the considered view that only just and fair order that can be passed in the present writ petition is that in reply to the show cause notices dated 13th June, 2007 the petitioner should file its reply, but however, no action would be taken thereafter until and unless the appeals pending before

the Tribunal are decided in accordance with law. The stand taken by the respondents in para 9 of the reply affidavit is on similar lines.

5. With the above observations, the writ petition is disposed of. No order as to costs.

6. All other contentions raised in the present writ petition are kept open.

Sd/-

CHIEF JUSTICE

Sd/-

DR.D.Y.CHANDRACHUD, J.